

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LAND APPLICATION NO. 13 OF 2022

(Arising from the High Court of Tanzania, at Mbeya in Land Appeal No. 2 of 2020,
Originated in the District Land and Housing Tribunal for Mbeya, at Mbeya in
Application No. 217 of 2018.)

ISSACK TITO ZUMBA (Administrator.....**APPLICANT**
of the Estate of the Late Tito Punguza Zumba)

VERSUS

SAZA VILLAGE COUNCIL.....**1ST RESPONDENT**

SONGWE DISTRICT COUNCIL.....**2ND RESPONDENT**

RULING

Date of last Order: 05.07.2022

Date of Ruling: 06.09.2022

Ebrahim, J.

The applicant **ISSACK TITO ZUMBA** as the administrator of the estates of the late Tito Punguza Zumba lodged this application seeking leave to appeal to the Court of Appeal of Tanzania to challenge the decision of this court made in Land Appeal No. 02 of 2020. The application is brought under **section 47 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019** and **section 5 (1) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2019**. It is accompanied by an affidavit deposed by the applicant.

The facts raising to this application can be briefly stated as follows: the applicant instituted land application before the District Land and Housing Tribunal as the administrator of the estate of his late father one Tito Punguza Zumba. The case was heard on merits as the parties adduced the evidence and the Tribunal visited the locus in quo. In the end however, the application was struck out for want of necessary party, being Chudeco Village. Aggrieved by the decision, he appealed to this court. Having considered the appeal and re-evaluated the evidence adduced before the trial Tribunal; this court (Hon. Mongella, Judge) dismissed the appeal for want of merits. Still aggrieved, the applicant is intending to appeal to the Court of Appeal, hence the instant application.

When the application was scheduled for hearing, the applicant was represented by Mr. Felix Kapinga, learned Advocate whereas the respondents were represented by Mr. Baraka Chaula, law Officer of Songwe District Council. The application was heard by way of written submission as scheduled by the court.

Counsel for the applicant prayed to adopt the affidavit in support of the application. He then submitted that there are *prima facie* arguable appeal to be considered by the Court of Appeal, to wit:

- a) Whether it was proper for the trial tribunal to visit locus in quo and hear only one side without giving the appellant the right to show his land cum the boundaries.
- b) Whether it was right for the Saza Village Council to acquire land and allocate to Songwe District Council without the consent of the owner and fair compensation.

In furtherance of his arguments, counsel for the Applicant referred to the case of **British Broadcasting Corporation v. Eric Sikujua Ng'amaryo**, Civil Application No. 133 of 2004 (unreported). He also said that the applicant has shown a novel point of law. He therefore prayed for this court to grant the application.

On his part, Mr. Chaula opposed the application. Apart from praying to adopt the counter affidavit of the respondents, he briefly submitted that the applicant has not established good reasons for this court to grant leave to appeal to the Court of Appeal. According to him the applicant has made something which is incomprehensible by this court and that he has raised new issues which were not dealt by the trial Tribunal or this court in the first appeal. Mr. Chaula therefore urged the Court to dismiss the application with costs.

I have considered the submissions by the parties. I am also mindful of the fact that on applications of this nature the applicant must

demonstrate that there are some arguable points of law or matters of general importance emanating from the impugned decision to convince the Court to exercise its judicious discretion to grant leave. This court is therefore tasked to determine whether the applicant has advanced good cause for this Court to grant leave to appeal to the Court of Appeal.

The law is settled. Leave may be granted where there is a point of law, or the intended appeal stands a good chance of success or there is a point of public importance to be determined by the Court of Appeal. There a number of cases that has insisted on the sufficient cause for leave to appeal to the Court of Appeal. See, the cases of **Nurbhain Ruttansi v. Ministry of water Construction, Energy and Environment** [2005] TLR 220, **Butto Shushu MacDougal v. Studi Bakers Tanzania Limited and Khalid Shabani Mtwangi**, Misc. Land Case Appeal No. 220 of 2008. In the case of **Harban Haji Mosi and Another v. Omar Hulal Seif and another**, civil Reference No. 19 of 1997 (unreported) which was quoted with approval in the case of **Rutagatina C.L v. The Advocates Committee and Clavery Mtindo Ngalapa**, Civil Application No. 98 of 2010, the Court of Appeal stated that:

"Leave is granted where the proposed appeal stands reasonable chances of success or where/ but not necessarily the proceedings as whole reveal such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmeriting matter and to enable it to give adequate attention to cases of true public importance."

The same principle was reiterated in the case of **British Broadcasting Corporation v. Eric Sikujua Ng'amaryo**, (supra) that:

"Needless to say leave to appeal is not automatic. It is within the discretion of the Court to grant or refuse leave. The discretion must however be judiciously exercised on the materials before the Court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issue of general importance or a novel point of law or where the grounds show a prima facie or arguable appeal."

In the instant application, the applicant has asserted that when the DLHT visited locus in quo, it did not give him opportunity to show the boundaries of his land. However, I fail to understand exactly what did the Applicant mean. It was not understood if he is complaining that he was denied his right to be heard or not. On the other hand the Applicant has premised his complaint to the issue of fact which according to the

case of **MS Airport Properties Limited vs The Registrar of Titles & Another** Civil Application No. 389/17 of 2020 (unreported) this court at the stage of hearing the application is not required to go to the merits of the matter but only to peruse the record and see if the proceedings or the judgment reveals any disturbing feature worth for consideration by the Court of Appeal. It was held that:

"...We unreservedly hold this opinion cognizant of the fact that at this stage, the Court should concern itself with the determination as to whether the proposed grounds of appeal raises points of law or issues of public importance without considering substantive issues that are to be dealt by the appellate court"

Having carefully perused the proceedings and the judgment of the trial Tribunal which the applicant's complaints are based; and having cross checked the proceedings and judgment of this court during the first appeal; and having also considered the position of the law stated above, I find no any disturbing feature worth for consideration by the Court of Appeal.

As the result, I hereby dismiss the application with costs.

Order accordingly.

Mbeya
06.09.2022




R.A. Ebrahim
Judge